1947 K File No. O Security Measures/47

Legal DEPARTMENT

A. BRANCH

Subject:—

Opinions under the Bombay Security Measures Ordinance, 1946, which is substituted by the Bombay Public Security Measures Act, 1947.

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C O N T E N T S.

Legal Department File No. c. Security Measure1947.

Compilation No.	Subject.	Pages.
	opinions under the Bombay Security Measures Ordinance, 1946, which is substituted by the Bombay Public Security Measures Act, 1947.	
1. C. No. 1-A/ 12-4-47.	Sec. 2(1) (a) Question whether a notice can be served on the Printer and Publisher of any paper prohibiting him from publishing his paper for a fixed period or at least prohibiting him from printing or publishing matter of any specified nature.	1-2
2. C. No. 6218/ 16-6-47.	Questions (1) whether Government can extend the period of restraint by issuing an amending order and (2) in the present case the Second order of 16-5-47 is based on another article, whether it would be proper to extend the order or to issue a fresh order.	3-4
3. C No. 6762/ 1-7-47.	Sec. 2 (1) (a) and Sec. 3 Question whether the grounds communicated to the detenues viz. that they have no ostensible means of livelihood and are suspected of committing Crimes would be proper basis to hold that these persons are acting in a manner prejudicial to the public safety, the maintance of public order or the tranquillity of the Province or part thereof.	5-6
4. C. No. 6672/ 28-6-47.	Questions (1) whether, once the fine is recovered under Sub. Sec. (7) of Sec. 6 it can be refunded by invoking the power to exempt under sub. sec. (4), if not (2) whether the fine can be remitted under sec. 401 Criminal P.C. or under the general power vested in Government.	7-8
5. C. No. 8379/ 14-8-47.	Sec. 2 (1) (a) Question whether the ground that a person is a "bad character" would in itself be a sufficient ground for detention of such person.	9-10
6. C. No. 9928/ 10-10-47.	Sec. 2 (1) (3) Question whether refusal of a refugee to vacate the camp or to shift to another camp would be construed as prejudicial to the public safety etc.	11-1[illegible]
7. C. No. 10131/ 21-10-47.	Sec. 6 (1) Question whether collective fines can be imposed under-	13-1[illegible]
8. C. No. 11479/ 1-12-47.	Free Hindustan - Restraint order— Definition of month ~~xx-xx~~ Sec. 2 (1) (a)	15-1[illegible]
9. C. No. 449-Compl. 13-12-47.	Question whether spying can be prohibited.	17-1[illegible]

10.	C. N.. 463- Confdl./ 23-12-47.	Question whether part of the notification is valid in so for as it relates to the levy of collective fine on the ground that the inhabitants are harbouring the offenders concerned in the commission of these offences and whether the collective fine would be justifiable. 21-28.
10.	C. No. 12009/ 12-12-47.	Question whether it would be feesible to impose any order of restraint upon the aviation companies prohibiting these from transporting certain newspapers into the Province. 19-20.

EVY. 9/5.

SNA 23/5

DHS 23/5

Office of the R.L.A.

Clause (e) of section 2(1) of the Bombay Public Security Measures Act, 1947 provides that the Provincial Government may, if it is satisfied that any person is acting in a manner prejudicial to the public safety, the maintenance of public order or the tranquillity of the Province or any part thereof, make an order imposing upon him such restriction as may be specified in the order, in respe of his employment or business or association or communicati with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinion. Power to impose restriction does not include power to stop business or activities. Consequently it would not be competent for Government to prohibit by a notice under clause (e) of section 2(1) the printer and publisher of a newspaper from publishing the paper for a fixed period; but there would be no legal objection to serving under that provision a notice on the printer and publisher of any paper prohibiting printing or publishing matter of any specified nature.

Sd/-
D.V.V.

Remembrancer of Legal Affairs.

U.R.- to H.D. (Poll) No. 1-A dated the 12th April 1947.

EVY. 9/5.

Seen and returned. By the article dated the 8th May the course of prejudicial conduct was continued. That article was published after Government issued the first order; and, therefore, it would justify Government in directing an extension of the first order.

Sd/-
P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll), No. 6218, dated the 16th June 1947.

EVY. 9/6.

Reading clause (a) of section 2(1) with section 3 of the Bombay Public Security Measures Act, 1947, it is clear that the grounds communicated to the detenu must prima facie support the inference that he is acting in a manner prejudicial to the public safety, the maintenance of public order or the tranquillity of the Province or any part thereof. The grounds communicated to the nine detenus in the present case are that they have no ostensible means of livelihood and are suspected of committing crimes would no doubt be a valid ground for demanding security from these persons for good behaviour (see section 109 (b) and section 110 of the Criminal Procedure Code) but would be no proper basis to hold that these persons are acting in a manner prejudicial to the public safety, the maintenance of public order or the tranquillity of the province or part thereof. (Cf. section 107 and other sections in Ch. VIII-B of the Criminal Procedure Code). Consequently the view taken by Secretary, H.D. is correct. If a representation is made to Government under section 4 Government may cancel the orders of detention.

Sd/-
D.V.V.

U.R. to H.D. (Special), No. 6762, dated the 1st July 1947.

DVV. 9/5.

The questions raised for the consideration of the R.L.A. are:-

1. Whether, once the fine is recovered under sub-section (7) of section 6 of the Bombay Public Security Measures Act, 1947, it can be refunded by invoking the Power to exempt under sub-section (4), if not,
2. Whether the fine can be remitted under section 401 Criminal Procedure Code or under the general power vested in Government.

Sub-section (1) of section 6 of the Bombay Public Security Measures Act, 1947 provides for the imposition of collective fine on the inhabitants of the area. Sub-section (4) empowers the Provincial Government or any officer authorised under sub-section (2) to exempt any person or class or section of such inhabitants from liability to pay any portion of any fine imposed under this section. Sub-section (5) provides for the apportionment of such fine in such manner as is deemed proper among the inhabitants who are liable collectively to pay it, and sub-section (7) provides for the recovery of fine. Reading these provisions together it appears clear that the steps to be taken in connection with the levy of collective fine should be in the following sequence: (a) to impose collective fine on the inhabitants of the area; (b) to determine persons or class or section of such inhabitants be exempted from the liability to pay fine; (c) to apportion the fine among the inhabitants excluding those exempted; and (d) to recover the fine from such inhabitants. To recover the fine first from all the inhabitants of the area and then to grant exemption to some of them would, besides being contrary to the provisions of section 6 involve the reimposition of fine on the inhabitants consequent on the exemption granted to some persons or class or section of inhabitants - a step which has not been provided for by the Act. Consequently it would not be legally feasible

to refund after recovery the fine by resorting to sub-section (4) of section 6.

Under clause (a) of sub-section (7) of section 6 of the Bombay Public Security Measures Act the fine payable by any person (including a Hindu undivided family) may be recovered in the manner provided by a court as if such fine were a fine imposed by a court. It is apparent from this clause that only such of the provisions of the Code of Criminal Procedure as are applicable to the recovery of fine would be applicable to the recovery of fine imposed under section 6 of the Bombay Public Security Measures Act. Section 401 Criminal Procedure Code which relates to suspension or remission of sentences is not one of such provisions. Further, as opined by the R.L.A. in his opinion No. 231-Confl, dated 25-5-1946 and concurred in by the Advocate General the word remit as used in section 401 Criminal Procedure Code refers to remitting of the penalty, a statement that it will not be recovered, and fine once recovered is part of and merged in the revenues of the Province and no repayment thereof can be made by an executive act of Government unless it has been authorised by the Assembly (see section 80 (3) of the Government of India Act, 1935). Consequently both the questions raised in this case are answered in the negative.

Sd/-
D.V.

Remembrancer of Legal Affairs.

U.R. to H.D. Special, No. 6672, dated the 28 June 1947.

EVI. 9/5.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether the ground that a person is a "bad character" would in itself be a sufficient ground for detention of such person under section 2 (1) (a) of the Bombay Public Security Measures Act 1947.

Reading clause (a) of sub-section (1) of section 2 with section 3 of the Bombay Public Security Measures Act, 1947, it is clear that the grounds communicated to the detenu must prima facie support the inference that he is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof. "Bad character" would no doubt be a valid ground for demanding security from the persons concerned (vide section 110 (f) of the Code of Criminal Procedure, 1898) but that in itself would afford no justification for holding that the persons concerned are acting in a manner prejudicial to the public safety, the maintenance of public order, the tranquillity of the Province or part thereof. Consequently, the view taken by the Secretary, H.D. is correct. (Cf. R.L.A's No. 6762, dated 1st July 1947).

Sd/-
D.V.V.

U.R. to H.D. (Special), No. 8379, dated the 14th August 1947.

EVV. 8/5.

Eviction of refugees from transit camps.

Bombay Public Security Measures Act, 1947.

A Mere refusal of a refugee to vacate the refugee camp or to shift to another camp would not be construed as prejudicial to the public safety, the maintenance of public order or the tranquility of the Province or any part thereof within the meaning of section 2 (1) of the Bombay Public Security Measures Act, 1947 and consequently such refugees cannot be externed by an order under sub-section (3).

Sd/-
P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D. (Special), No. 9928, dated the 10th October 194

EVY. 9/5.

Collective Fines.

The Bombay Public Security Measures Act, 1947, section 6(1).

The view taken by Secretary, H.D. is correct. Collective fines can be imposed under section 6 (1) of the Bombay Public Security Measures Act, 1947 provided the acts which occasion the levy of the collective fine are committed by the inhabitants of the area after Part II of the Act is brought into force in that area. The expressions used "are concerned", "are armament harbouring" etc. and not "were concerned" or have been concerned.

Sd/-
P.H.L.
Remembrancer of Legal Affairs,

U.O. to H.D., No. 10131, dated the 21st October 1947.

EVY. 9/5.

Free Hindustan.

Restraint of order

Bombay Public Security Measures Act, 1947.

The restraint order was served on 27th September 1947 from which date the period of one month is to be computed. "Month" has not been defined in the Bombay Public Security Measures Act, 1947.

Although the restraint order is passed under the Bombay Public Security Measures Act, 1947, the provisions of the Bombay General Clauses Act, 1904, cannot be resorted to for the purpose of interpreting the wording of the order. Consequently, the definition of month given in the Bombay General Clauses Act will have no application and "month" mentioned in the order will have to be construed as a lunar month, in which sense it is usually understood in the absence of a specific definition (Cf. In South British Fire and Marine Insurance Co. vs. Braja Nath Shaha (36 Cal., 516). In the circumstances the restraint Order expired on 24th October 1947 and the articles published in "Free Hindustan" thereafter would not be hit by the restraint order.

Sd/-
P.M.L.
Remembrancer of Legal Affairs,

U.R. to H.D. (Poll), No. 12479, dated the 1st December 1947.

AVP. 9/5.

Action under section 3(1) (a) of the Bombay Public Security Measures Act, 1947 can be taken against those persons only whose activities are prejudicial to the public safety, the maintenance of public order or the tranquility of the Province or any part thereof. It is not clear in what manner the servants of this Government in East Khandesh have been aiding the Nizam's officers and whether by rendering such aid they do anything prejudicial to the public safety etc. of this Province or any part thereof. Unless the spying results or tends to result in such prejudicial activities, it would be difficult to justify an order under section 2 (1) (a).

Whether spying can be prohibited. Bombay Public Security Measures Act, 1947.

Sd/-
P.M.L.
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 449-Confl. dated the 13th December 1947.

EVY. 9/5.

Under sub-section (2) of section 49 of the Government of India Act, 1935, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws. Item No. 26 in the Federal Legislative List relates to the carriage of passengers and goods by sea or by air. Under rule 13(1) in the First Schedule to the Carriage by Air Act, 1934, the consignee is entitled on the arrival of goods at the place of destination to require the carrier to hand over to him the air consignment note and to deliver the goods to him on payment payment of the charges due and on complying with the conditions as set out in the air consignment note. In view of the facts that the field is already occupied by Dominion law, it would not have been competent to the Province of Bombay even on the ground that such legislation is incidental or ancillary to the purpose of law and order to make any legislation relating to the carriage of goods by air or repugnant to the provisions of the rule just cited. What the Province could not do by way of legislation it cannot achieve by an executive order, even purporting to have been issued under the Public Security Measures Act. The scope of that Act, which is made in the interests of law and order, cannot be so far expanded as to trench upon an item in the Federal Legislative List which has already been covered by Dominion Legislations. In my opinion, therefore, it would not be feasible to impose any order in the nature of restraint upon the aviation companies prohibiting them from transporting certain newspapers into the Province.

2. Another minor difficulty which may be pointed out here is that, although the word "person" generally includes a limited Company, there is unfortunately no provision in the Public Security Measures Act of the usual kind, for fixing Criminal responsibility upon the Manager, Director, etc., of the Company. The question, however, does not arise since a

restraint order of the kind contemplated cannot be validly made.

3. So far as the distributors of the papers are concerned, the question does not present any difficulty. Restraint orders can be served on them under clause (e) of section 2 particularly under that part which speaks of activities in relation to the dissemination of news.

Sd/-
P.M.L.

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll), No. 12009, dated the 12th December 1947.

EVY. 9/5.

It appears that section 4 of the Bombay Security Measures Ordinance, 1946, was applied to the District of Ratnagiri on 8th February 1947. Certain offences affecting public safety and the maintenance of public order were committed in December 1946 in the village of Dabhol. On 8th February 1947, Government in exercise of powers conferr by sub-section (1) of section 4 of the Bombay Security Measures Ordinance, 1946, directed the imposition of a collective fine of Rs. 30,000/- on the inhabitants of the said village of Dabhol on the ground that the inhabitants of Dabhol were concerned in the commission of offences and were harbouring persons concerned in the commission of such offences. Relying on the opinion of the R.L.A. No. 10131 dated the 21st October 1947, H.D. concedes that the inhabitants cannot be said to be concerned in the commission of the offences within the meaning of section 4(1) of the Ordinance in as much as the offences were committed long before that provision was applied to the District. But it appears to hold that the inhabitants are now harbouring the offenders concerned in the commission of those offences and the imposition of the collective fine on this ground could be justified. The R.L.A. is requested to advise whether a part of the notification at p. 9 ante is valid in so far as it relates to the levy of the collective fine on the ground that th inhabitants are harbouring the offenders concerned in the commission of these offences and whether the collective fine would be justifiable.

2. Under section 4 (1) of the Bombay Security Measures Ordinance, 1946, a collective fine could be imposed on the inhabitants of any area "if it appears to the Provincial Government that the inhabitants are concerned in the commission of offences affecting the public safety or the maintence of public order, or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend

the offender of offenders, or are suppressing material evidence of the commission of such offences." It is evident that the act of harbouring must be subsequent to the application of the ordinance. It is possible to argue that the offences, the person concerned in which are being harboured, need not themselves be committed after such application, and that the words "s concerned in the commission of such offences " may apply alike to persons who were concerned in the past in offences of that kind. That would not, however, seem to be the natural interpretation of the enactment. The words concerned in the commission of such offences" in the expression "are harbouring persons concerned etc." must naturally have reference to the similar words occurring before "are concerned in the commission of offences", and when they are so interpreted, it would follow that the harbouring must itself be of persons who are concerned in the commission of the offences subsequent to the application of the enactment. This interpretation gathers support from the use of the wrds "offender of offenders" occurring in the clause immediately followng the one under construction. In any case, the point is not free from doubt, and as this is a highly penal enactment resulting in the imposition of a fine, it must be construed liberally in favour of a a finr, it must be mum the subject.. I am, therefore, inclined to hold that the harbouring must be of persons who have committed offences of the kind described in the section after it was applied to te the particular area. In that view in as much as the offences were committed in this case long before the section was applied, the notification levying collective fine would not appear to be legal.

Sd/-
Re I.L.L.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 463-Confl., dated the 23rd December 1947.